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SUBJECT: FOIA -- Problems and Legislative Relief

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## CIA'S PROBLEMS IN ADMINISTERING THE FREEDOM OF INFORMATION ACT

Legal Requirements

Under the Freedom of Information Act (FOIA), any person, regardless of nationality, can request access to records on any topic. Privacy Act (PA) requests can be either for access to records pertaining to the requester or for the amendment or expungement of information contained therein. Only U.S. citizens or permanent resident aliens are entitled to the benefits of the PA. Executive Order 12065 (EO) authorizes any person, or another federal agency, to request the mandatory review of classified records. The laws specify categories of information that are exempted from disclosure, but, whenever feasible, nonexempt portions of documents must be released. Failure to release requested documents, or to act upon requests within specified time periods, can lead to administrative appeals or, in the case of FOIA and PA requests, litigation.

Request Volume

From the beginning of CY 1975 through the close of CY 1980, the CIA has logged 26,013 requests, of which 12,748 were FOIA requests. While this figure is not large when compared with certain other agencies, the compartmented and decentralized nature of the Agency's systems of records has necessitated the diversion of considerable manpower to their processing. The review and sanitization of documents has been particularly costly, with a minimum of two reviews required to guard against the inadvertent disclosure of intelligence sources and methods.

Manpower

At last count, the Agency was employing ☐ full-time employees and ☐ part-time employees exclusively on the processing of FOIA, PA, and EO requests, appeals, and litigation--the equivalent of ☐ full-time personnel. Moreover, hundreds of other employees, at all levels, are occasionally called upon to process requests in addition to performing their normal duties. According to our records, 257,420.5 actual man-hours were devoted to this activity during CY 1980, which equates to 142 full-time personnel. Salary costs totaled more than \$2,900,000. Taking benefits (insurance, retirement, etc.) into account, the personnel costs amounted to slightly less than \$3,200,000, of which approximately \$1,735,000 can be attributed to the FOIA alone. We have not succeeded in calculating other costs (supplies, equipment, computer support, etc.), but these would run to no more than 5-10% of the personnel expenditures. STAT

Processing Backlogs

Despite this sizable resource commitment, the Agency has been unable to keep up with the request workload. As of 28 January 1981, action was still pending on 3,074 initial requests, 329 administrative appeals, and approximately 90 court cases. Except for those cases which can be answered by the central staff (Information and Privacy Division), e.g., requests for previously released material, we are never able to comply with the stipulated deadlines. Complex requests involving Directorate of Operations equities may require four years or more to complete. Cases that go into litigation have been particularly time-consuming, and, inasmuch as court-imposed deadlines must be met, manpower has to be diverted from processing initial requests and appeals, thereby creating further delays. These delays, of course, lead other requesters to bring suit. STAT

### Legislative Relief

While the Agency has expressed its concern to the Congress over the administrative burden caused by the FOIA, and our belief that the public has received little benefit from the fragmentary and sometimes inaccurate information which is often released, the major thrust has been on the so-called perception problem--the fact that there has been a serious erosion in the confidence of those persons and foreign services on whom we must rely as sources of information in CIA's ability to protect secrets. (Former DDCI Carlucci testified twice on this subject before Congressional committees during 1980.) Our attempt to obtain FOIA relief, accordingly, has focused on this aspect rather than the manpower demands.

### Specific Proposals

During 1980, the Agency proposed amending Section 6 of the CIA Act of 1949 to exempt from the disclosure provisions of any other laws information contained in certain categories of CIA records systems: viz., those concerned with scientific and technical collection systems; intelligence and counterintelligence operations; intelligence and security liaison arrangements; and security investigations conducted to determine the suitability of potential sources. If enacted, the information contained in the bulk of our operational files in the Directorate of Operations, plus a number of files maintained by the Science and Technology Directorate, would become exempt from disclosure under FOIA exemption (b)(3), which applies to information specifically exempted from disclosure by statute.

Bills were introduced into the last Congress incorporating the above language, but they were not acted upon. The Justice Department strongly opposed any piecemeal changes and, moreover, contended that the CIA proposals were too sweeping and too vague. They proposed, and the Agency accepted, a substitute. Under the Justice proposal, a new exemption, (b)(10), would be added to the FOIA, exempting from disclosure any information certified by the DCI or his designee to have been obtained from a person or organization other than a U.S. Government entity or employee; any information which identifies or tends to identify a source or potential source; and any information, with one exception, concerning scientific or technical information systems. The DCI's certification would not be subject to judicial review. The Justice Department bill incorporating this change, however, was never sent to the Office of Management and Budget.

### Prospects

Insofar as we are aware, no new legislative initiatives for FOIA relief have been developed within the Agency. If the Congressional climate has indeed changed markedly since the elections, a plea for total relief from the FOIA might be favorably received. A good case can be made. In many other countries, including democracies, the mere existence of a secret intelligence service is regarded as a state secret; yet the CIA is expected to engage in a full range of intelligence activities and, at the same time, to respond to requests for its records. It should be pointed out, however, that even this change would not totally relieve the Agency of its administrative burden. We have at least two years' work on hand, and the CIA would still be subject to future PA and EO requests, which together have comprised over 50% of the request workload.